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In the

Supreme Court of the United States

October Term, 1969

No. 1452

FIRST NATIONAL BANK IN DALLAS, Executor of the Estate of GEORGE PATTULLO, Deceased,
Petitioner

v.

THE UNITED STATES

LUCILE W. PATTULLO,
Petitioner

v.

THE UNITED STATES

PETITION
For a Writ of Certiorari
To the United States Court of Claims

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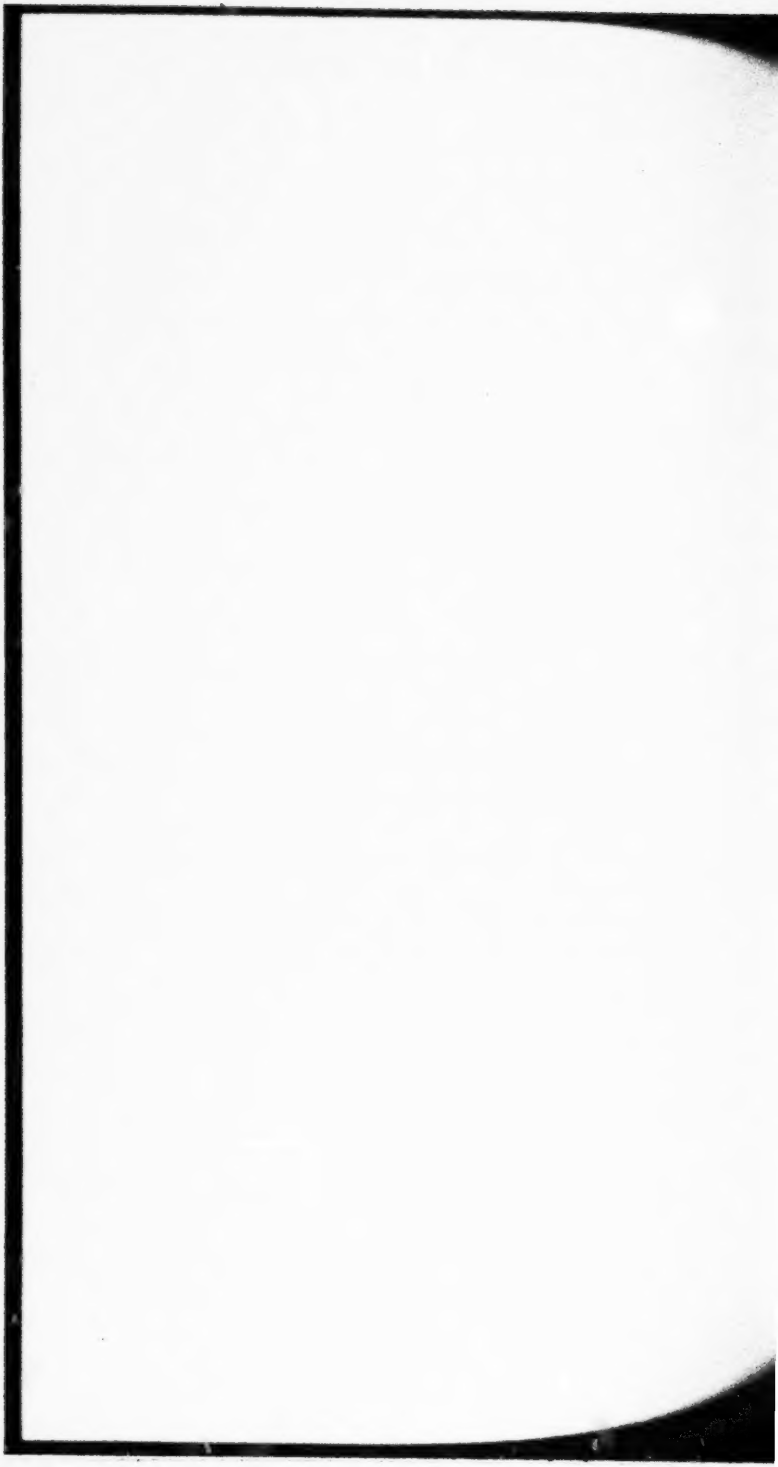

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First National Bank in Dallas, Executor of the Estate of George Pattullo, deceased, and Lucile W. Pattullo, petitioners herein, respectfully pray that a writ of certiorari issue to review the judgment of the United States Court of Claims entered in the above captioned consolidated causes on January 23, 1970.

By its judgment the United States Court of Claims dismissed suits of the petitioners for refund of Interest Equalization Taxes imposed by the Interest Equalization Tax Act of 1964 (P.L. 88-563, 78 Stat. 890, adding Chapter 41 to sub-title D of the Internal Revenue Code of 1954, 26 USCA Secs. 4911 et seq.).

OPINION BELOW

The opinion of the Court of Claims is not yet reported but is printed as Appendix A, infra, pp. 1a to 28a.

JURISDICTION

Jurisdiction of this Court is invoked pursuant to 62 Stat. 928, 28 USC Sec. 1254(1).

QUESTION PRESENTED FOR REVIEW

Whether a retroactive (14 months) new and novel excise tax on the acquisition of foreign investments, enacted for the announced purpose of curbing, after the retroactive effective date of the act, the outflow of U. S. dollars, is constitutionally applicable to acquisitions, long before the date of enactment, involving *no outflow of U.S. dollars after the effective date of the act*, particularly when the "notice" regarding the proposed tax stressed the necessity to curb the outflow of U. S. dollars *after the proposed effective date* and was therefore misleading as to pre-enactment transactions involving *no outflow* of U. S. dollars.

CONSTITUTIONAL PROVISIONS AND STATUTES INVOLVED

Constitution, Article 1, Section 1:

"All legislative Powers herein granted shall be vested in a Congress . . . " U.S.C.A. Const. Art. 1 Sec. 1.

Constitution, Fifth Amendment, due process clause. U.S.C.A. Const., Amend. 5.

Interest Equalization Tax Act (Public Law 88-563, adding Chapter 41 to sub-title D of the Internal Revenue Code of 1954) 26 U.S.C.A. Secs. 4911, et seq.

The Act is too long to be copied in full even by way of Appendix. The directly pertinent provisions of the Act in these cases are Sec. 2(a) of Public Law 88-563, imposing the tax:

—"(a) IN GENERAL. — There is hereby imposed, on each acquisition by a United States person * * of stock of a foreign issuer, or of a debt obligation of a foreign obligor * *, a tax determined under subsection (b).

"(b) AMOUNT OF TAX. —

"STOCK. — The tax imposed by subsection (a) on the acquisition of stock shall be equal to 15 per cent of the actual value of the stock.

and Sec. 2(c) of Public Law 88-563 fixing the effective date:

"(c) EFFECTIVE DATE. —

"(1) GENERAL RULE. — * * * the amendments made by this section shall apply with respect to acquisition of stock and debt obligations made after July 18, 1963."

STATEMENT OF THE CASE

George and Lucile Pattullo, residents of New York City at the times involved, had considerable Canadian dollars on deposit with the bank of Montreal, in Toronto, Canada, prior to July 18, 1963.

On July 18, 1963, President Kennedy recommended several proposals to the Congress designed to curtail the outflow of dollars from the United States. One of the various Presidential proposals so to curtail the outflow of U.S. dollars was the so-called Interest Equalization Tax.

The President's message and Treasury publications stressed the necessity that such tax be made retroactive to the date of the message, i.e., July 18, 1963, so as to curtail the outflow from the United States of U.S. dollars from that date forward.

After the date of President Kennedy's message and long before enactment of the Interest Equalization Tax, the Pattullos purchased stock of certain Canadian corporations in Canada and paid for these securities with Canadian dollars which were on deposit with the Bank of Montreal, in Toronto, Canada, before the date of the President's message, July 18, 1963.

The suits for refund were based upon the claim that retroactive application of this new and novel excise tax, which was enacted for the precise purpose of curbing the outflow of U.S. dollars after July 18, 1963, is unconstitutional as applied to the Pattullo transactions.

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Throughout the proceedings below, in the claims for refund filed with the Internal Revenue Service, the Petitions in the Court of Claims and the briefs and argument in the Court of Claims, the constitutional question was urged in two parts, *first*, that notice by Presidential Message or other public announcement of the proposed retroactivity of a taxing statute does not suffice to meet the standard of due process in the case of a new and novel tax such that it is highly unlikely that the ordinary taxpayer would fully appreciate the significance of what was proposed and, *second*, that if such notice is sufficient generally it does not suffice in these cases because the notice was misleading to persons in the circumstances of the Pattullos in that the emphasis on curbing outflow of U.S. dollars after the date of the notice appeared to exclude the Pattullo transactions.

The Court of Claims addressed itself to the first point and held that 14 months' retroactivity was not too much when accompanied by notice by Presidential Message of the proposed effective date.

But the Court of Claims wholly ignored the second point and proceeded as if the Pattullo transactions had involved outflow of U.S. dollars after the effective date of the Act.[1]

[1] Indeed, the only reference in the opinion to the fact that the Pattullo transactions involved no outflow of U. S. dollars after the effective date of the Act is in the final footnote to the Opinion which relates not to the constitutional question but to the possibility, which the Court of Claims rejected, that as a matter of *construction* the Act might be held not to apply to transactions involving no outflow. (A. 15)

REASONS FOR GRANTING THE WRIT

1. The protracted retroactivity of the new and novel excise tax exceeds the limit of due process in the imposition of taxes, as such limit is defined by the Supreme Court of the United States in its decisions in *Nichols v. Coolidge*, 274 U.S. 531; *Blodgett v. Holden*, 275 U.S. 142; *Untermyer v. Anderson*, 276 U.S. 440; *Coolidge v. Long*, 282 U. S. 582; and see *Welch v. Henry*, 305 U.S. 134, which sets up guidelines consistent with the foregoing cases.

2. The Administrative "notice" stressing the purpose to curb outflow of dollars after June 18, 1963 cannot be sufficient "due process notice" in respect of transactions which involved no outflow of U.S. dollars after such notice. Indeed, such notice is not only inadequate but misleading.

FIRST

The issue of Constitutional "due process" of retroactive taxing statutes has been considered by this Court with sufficient regularity that clear guidelines have evolved from the opinions of this Court, last enunciated in *Welch v. Henry, supra.*

The question turns on the adequacy of notice to potential taxpayers. The Supreme Court has said:

a. Where a taxing statute is already on the books, and hence is not new or novel, reasonable retroac-

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tivity is permitted in respect of increasing rates or otherwise adding to the pinch of the statute, because taxpayers are considered to have notice from the existence of the Statute that such changes may well occur.

b. Where Congress has traditionally retroactively taxed a particular thing or act, then limited retroactivity in a tax on such thing or act can be reasonably anticipated, thus again a type of reasonable notice, deriving from long practice of Congress.

c. Where the retroactive taxing statute touches an act which is in reality involuntary, then limited retroactivity is constitutional on the ground that regardless of the sufficiency of the notice, the taxpayer would have acted in the precise manner in which he did act.

Thus, *Welch v. Henry, supra,* at p. 147:

> "But the Court pointed out that there would be no deprivation of due process if a tax, though retroactive, were not on some *voluntary* act, or if the taxpayer was forewarned *by the statute* of the possibility of an increased levy or by *the practice of Congress* in repeatedly enacting revenue acts having limited retroactivity." (Emphasis supplied.)

Where none of these circumstances exists, and the tax is new and novel, prolonged retroactivity cannot meet the test of due process.

These principles represent the guidelines of fairness (due process) that a taxpayer is entitled to in respect of the retroactivity of taxing statutes.

Many of the retroactive tax cases which have come before the Supreme Court involve income tax. Most have involved increase in rates effective to the beginning of the year of enactment. The adequacy of due process in these cases is sustainable on two grounds: (1) that the increase in rates of an existing taxing statute is reasonably foreseeable, and (2) that the receipt of income is in reality an involuntary act. Moreover, where the increase in rates is retroactive to the first day of the year of enactment there is really no retroactivity since net income cannot be determined until the end of the year after the date of enactment.

In *Untermyer v. Anderson, supra*, this Court held the 1924 gift tax — then new and novel — to be unconstitutional in respect of its retroactivity where the donor, in an obvious race to beat Congress to the punch, made a gift several months after the proposed legislation was introduced and two days before the new and novel tax became law. This Court said:

> "The mere fact that a gift was made while the bill containing the questioned provisions was in the last stage of progress through Congress we think is not enough to differentiate this cause from the former one and to relieve the legislation of the arbitrary character there ascribed to it. To accept the contrary view would produce insuperable difficulties touching interpretation and practical application

> of the statute, and render impossible proper understanding of the burden intended to be imposed. The taxpayer may justly demand to know when and how he becomes liable for taxes — he cannot foresee and ought not to be required to guess the outcome of pending measures. The future of every bill while before Congress is necessarily uncertain. The will of the lawmakers is not definitely expressed until final action thereon has been taken."

It is abundantly clear that the tax in question was new and novel,[2] and it is also clear that this tax is an excise tax (not an income tax), and that not *one* of the due process guidelines is met in respect of the retroactive provisions of the Interest Equalization Tax Act.

In any event, if the existing guidelines are to be expanded to sanction notice merely by administrative announcement in a new and novel tax — and if, therefore, *Untermyer v. Anderson, supra,* is to be overruled — it should be done only by this Court after full development of the important constitutional questions by grant of certiorari.

SECOND

The Interest Equalization Tax was proposed in the President's message of July 18, 1963 as one of ten measures designed to reduce the outflow from the

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[2] Secretary of the Treasury Dillon, in testifying on behalf of the proposed tax (Hearings before the Committee on Ways and Means, House of Representatives, 88th Congress, First Session on H.R. 8000, page 109): "I am ready to admit, perfectly ready to admit, that we never had anything like this, and it is obviously something new."

United States of United States dollars and thus to correct an adverse balance of payments.

Similarly, the Treasury Department releases made the purpose clear to curb the outflow of U.S. dollars from the United States after July 18, 1963, and this was the thrust of the "notices" regarding the Interest Equalization Tax.[3]

Even if it be assumed that the Administrative "notice" be sufficient to support due process of 14-months retroactivity of a new and novel excise tax as applied to citizens who purchase foreign securities involving outflow of dollars from the United States, it does not follow that the notice is sufficient as to persons who purchase foreign securities with foreign funds which were foreign

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[3] The announced purpose in the Presidential message was " * * * to effect an overall reduction in the outflow of American funds for stocks, bonds, and long-term loans * * *." (R. Stip. Ex. 1)

On July 18, 1963, the Treasury issued a "Detailed Explanation of the Interest Equalization Tax" stating: "Exemptions from the tax are provided for acquisitions of interests which do not fall within the area of long-term capital outflows to which the tax is designed to apply." (R. Stip. Ex. 2)

On the same date the Treasury issued a shorter statement styled "Information on Proposed Interest Equalization Tax" which again referred to the purpose of the proposed tax: "The President today announced a series of coordinated actions to reinforce the Administration's program to correct the United States balance of payments deficit, including a request for an interest equalization tax, to be effective July 19, 1963." (R. Stip. Ex. 3)

Similarly, the newspaper reports of the President's message stressed the same purpose: "The purpose would be to slow the flow of capital and gold abroad and thus improve the country's balance of payments position * *. Thus, Mr. Kennedy said, the flow of long-term capital out of the United States could be substantially checked and the national balance of payments position improved." (R. Stip. Ex. 4)

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even before the notice and the initial retroactive date. The fact is that these notices emphasizing the "no outflow of U.S. dollars" theme were misleading as to these transactions.

How can it be said that an acquisition (before date of enactment) involving foreign funds that were foreign before the effective date of the Act is violative of the purpose and spirit of the taxing act as announced by the President?

To the contrary, it is clear that one could easily conclude that the "notice" would sanction such transactions as being outside the ambit of the "notice" as well as the scope of whatever legislation might be enacted in pursuance of such "notice" at a later date. Indeed, the Treasury Release ("Detailed Explanation") quoted in footnote (3) said as much.

Yet the Court of Claims in its opinion wholly ignores the point and treats the constitutional question as if the transactions did involve outflow of U.S. dollars after July 18, 1963.

Perhaps the Court of Claims was under the impression that unless it decided against Petitioners there might be wholesale circumvention of the Interest Equalization Tax during the period from the President's message to the date of enactment of the Interest Equalization Tax.

Such is a complete misapprehension.

The Canadian dollars held on deposit in Canada by the Petitioners were so held *prior* to the President's message.

This is not a case of circumvention of a proposed Act by converting U.S. dollars to Canadian dollars between the retroactive effective date of the tax and the date of enactment, and then purchasing foreign securities. If such were the case, then the "notice" would be sufficient upon the assumption that it otherwise meets the due process guidelines of the Supreme Court.

In these cases Petitioners owned *foreign* (Canadian) *funds*, located in a *foreign* (Canadian) *bank*, *prior* to the President's message and the effective date of the Act. Thus, any fear the lower Court might have about wholesale circumvention is without foundation.

The issue raised in these cases concerns *only* the retroactivity of the Interest Equalization Tax and then *only* as applied to transactions *which involved no outflow of U.S. dollars after the date of the notice and the effective date of the statute.*

The effect of the Court of Claims not coming to grips with the adequacy-of-the-notice-issue is to deny Petitioners their day in court. In any event, the adequacy of the notice as applied to the particular circumstances of this case raises important constitutional questions which deserve the attention of this Court.

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WHEREFORE Petitioners pray that a writ of certiorari issue to review the judgment of the Court below.

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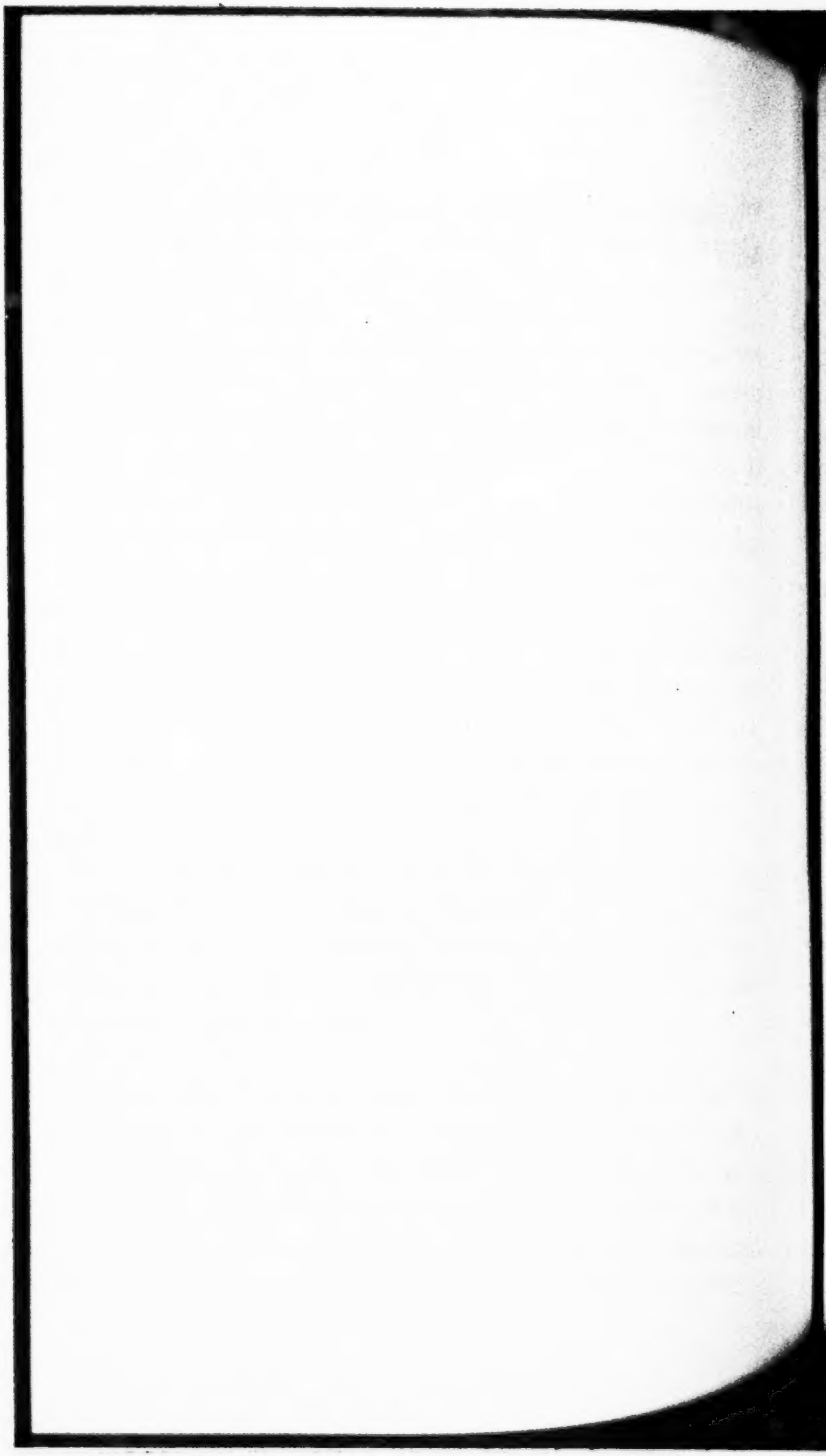

APPENDIX

APPENDIX

APPENDIX A

In the United States Court of Claims

(Decided January 23, 1970)

No. 52-66

FIRST NATIONAL BANK IN DALLAS, EXECUTOR OF THE ESTATE OF GEORGE PATTULLO, DECEASED *v.* THE UNITED STATES

No. 53-66

LUCILE W. PATTULLO *v.* THE UNITED STATES

Maurice E. Purnell for plaintiffs; *John D. Heckert*, attorney of record. *A. E. Aikman, Locke, Purnell, Boren, Laney & Neely*, and *McClure & Trotter*, of counsel.

Philip R. Miller, with whom was *Assistant Attorney General Johnnie M. Walters*, for defendant. *Knox Bemis*, of counsel.

Before COWEN, *Chief Judge*, LARAMORE, DURFEE, DAVIS, COLLINS, SKELTON, and NICHOLS, *Judges*.

OPINION

LARAMORE, *Judge*, delivered the opinion of the court:

In these suits, the First National Bank in Dallas, as executor of the estate of George Pattullo, and Lucile W. Pattullo (his widow), seek recovery of Federal excise taxes and interest paid by the Pattullos, individually, with respect to their purchases of certain stocks of Canadian corporations in late 1963 and early

1964. The dispositive issue involves the constitutionality of the Interest Equalization Tax Act of 1964[1] as applied to the transactions here involved. The facts are stipulated and will be summarized here only to the extent necessary to explain the basis for our decision that plaintiffs are not entitled to recover.

On July 18, 1963, President John F. Kennedy delivered to both Houses of Congress a message[2] wherein he proposed an "interest equalization tax," the purpose of which was to alleviate the United States balance of payments problem by restricting long-term capital outflow from the United States.

The proposed tax was to be levied on purchases of foreign securities by United States persons from foreign persons. The effective rate of the tax was to be 15 percent of the value of equity securities, and from 2.75 percent to 15 percent of the value of debt obligations not maturing within three years. Foreign securities purchased from United States persons were to be exempt.

In his message to Congress, President Kennedy explained, with respect to the timing of the proposed tax, that:[3]

[1] The Interest Equalization Tax Act of 1964 (P.L. 88-563, 78 Stat. 809, adding chapter 41 to sub-title D of the Internal Revenue Code of 1954) 26 U.S.C.A. §§4911 *et seq.*, provides in section 2, pertinent here, as follows:

(a) *In General.*—There is hereby imposed, on each acquisition by a United States person * * * of stock of a foreign issuer, or of a debt obligation of a foreign obligor * * *, a tax determined under sub-section (b).

(b) *Amount of Tax.*—

(1) *Stock.*—The tax imposed by subsection (a) on the acquisition of stock shall be equal to 15 percent of the actual value of the stock.

* * * * *

(c) *Effective Date.*—

(1) *General Rule.*— * * * [T]he amendments made by this section shall apply with respect to acquisitions of stock and debt obligations made after July 18, 1963.

[2] H. Doc. No. 141, 109 Cong. Record, Part 10, p. 12806 (Senate), and 109 Cong. Record, Part 10, p. 12940 (House of Representatives).

[3] 109 Cong. Record, Part 10, pp. 12809, 12943.

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> * * * Since the effectiveness of this tax requires its immediate application, I am asking Congress to make the legislation effective from the date of this Message. * * *.

After the President addressed Congress, and his message was made public, prices of stocks and bonds dropped on foreign exchanges, especially those in which Japanese or Canadian securities were traded. Other markets reflected a strengthening in the position of the dollar, and a rise in the prices of United States bonds and Treasury bills.

After July 18, 1963, it was general knowledge among dealers and brokers in stocks and bonds, both in the United States and abroad, that the Kennedy administration had recommended a tax, applicable from and after July 19, 1963, upon the purchase by United States persons of foreign stocks and bonds. It was also the practice of brokers and dealers in stocks and bonds to advise United States persons who wished to buy foreign stocks and bonds that such purchases (from non-United States persons) would be subject to the interest equalization tax if the pending bill were enacted with the effective date proposed by the President. Extensive publicity was given by the press to the President's proposed interest equalization tax, and to the proposed immediate effectiveness of the tax.

On the day of the presidential message, the United States Treasury Department issued a 25-page "Detailed Explanation of the Interest Equalization Tax," and a 6-page "Information on Proposed Interest Equalization Tax" with pertinent exemption certificates attached. Each document contained a description of the tax as proposed by President Kennedy, and each was made available to the press and the general public, and sent to members of the New York Stock Exchange. Subsequently, in the Federal Register of August 16, 1963, the Treasury Department published a "Notice of Proposed Effective Date" of the interest equalization

tax bill (H.R. 8000, 88th Cong., 2d Sess.). This notice stated that the tax was proposed to apply (with certain specified exceptions) to acquisitions of stock and debt obligations made after July 18, 1963. This Federal Register notice also set out a general description of the provisions of the proposed tax and of the exemptions from its coverage.

The application of the proposed tax to transactions on national securities exchanges in the United States was postponed until August 19, 1963, in order to allow representatives of the Treasury Department and of the exchanges to work out the technical problems for procedures adapted to the proposed tax and its proposed retroactive application. Beginning August 19, 1963, the exchanges instituted procedures whereby a foreign security was subject to normal exchange trading only if the seller was a United States person so that the transaction would not make the buyer liable for the proposed tax. The sale of a foreign security by a seller who was not a United States person could be made only by a special contract, pursuant to an offering stating: "buyer subject to Interest Equalization Tax." (On the New York Stock Exchange such a sale was designated on the ticker tape by the symbol "F.").

On August 22, 1963, the Toronto Stock Exchange put into operation a second market, called the "Foreign Market," to handle all transactions between United States sellers and United States buyers of Canadian stocks, such sales being exempt from the proposed interest equalization tax. All 1,100 stocks listed on the Toronto Stock Exchange could be traded on this Foreign Market. Bid and asked quotations on the Foreign Market were recorded at each trading post alongside the quotations for the regular market. Foreign Market purchase orders and sales orders were distinctively colored, and all floor slips for these transactions were stamped with the symbol "z". Also, records of Foreign Market transactions carried the prefix "z" on the Toronto Stock Exchange ticker tape.

The Interest Equalization Tax Act was signed into law on September 2, 1964; it contained the above-detailed proposed provisions, which were outlined in the presidential message, without significant change.

George Pattullo was born in Canada in 1880, and lived there until 1906 when he moved to the United States. Mr. Pattullo remained a British subject, however, until 1917 when he was naturalized a United States citizen. In 1913, he married Lucile Wilson, of Dallas, Texas, and throughout their marriage the Pattullos lived in Texas or New York. George Pattullo died July 29, 1967, in New York City, where the Pattullos had resided for many years; he was survived by his wife, Lucile.

For many years, including 1963 and 1964, both George Pattullo and Lucile Pattullo had accounts with Baker, Weeks & Co., a stock brokerage and investment advisory firm with its main office in New York City, as well as offices in Toronto and Montreal. James A. Edgar, a close personal friend of George Pattullo, and Thomas F. Bohen, both of Baker, Weeks & Co., acted as brokers for George Pattullo, who at all times made his own decisions as to what stocks he wanted to buy or sell. George Pattullo also gave instructions to these brokers as to the stocks to be bought or sold for the account of Lucile W. Pattullo.

During the last months of 1963 and the early months of 1964, George Pattullo gave instructions to Mr. Bohen or Mr. Edgar for purchase of stocks in certain Canadian Corporations. When George Pattullo said that he wanted to buy these stocks, Mr. Bohen and Mr. Edgar informed George Pattullo that there was pending before the United States Congress a proposed tax called the Interest Equalization Tax, which was proposed to be made retroactive, and if enacted as proposed, would apply to the purchase of foreign securities by United States citizens. Notwithstanding what Mr. Edgar and Mr. Bohen told him, George Pattullo gave them orders

to purchase the Canadian stocks on the Toronto Stock Exchange for his account and for his wife's account. Mr. Edgar, or Mr. Bohen, transmitted these orders to the Toronto office of Baker, Weeks & Co., which then executed the orders on the Toronto Stock Exchange.

During 1963 and 1964, George Pattullo maintained a United States dollar account and a Canadian dollar account in the Agency Bank of Montreal in New York City, and also a Canadian dollar account in the Toronto branch of the Bank of Montreal. When the Toronto office of Baker, Weeks & Co. executed the purchase orders for Canadian stock for George Pattullo, it charged his account styled "Canadian Funds Account" in Canadian dollars. (George Pattullo also had an account with Baker, Weeks & Co. in New York styled "United States Funds" account, to which were charged his purchases of United States securities.) Upon receipt of the stock certificates pursuant to the purchase orders, the Toronto office of Baker, Weeks & Co. would deliver the certificates to the Bank of Montreal, Toronto Branch, against payment by the Bank of Montreal, which would charge the payment to George Pattullo's Canadian dollars checking account in the Toronto branch of the Bank of Montreal. Upon such delivery and payment, the "Canadian Funds Account" with the Toronto office of Baker, Weeks & Co. would be credited with the payment received from the Bank of Montreal. The certificates were held by the Bank of Montreal in a "Safekeeping" account for George Pattullo. Lucile W. Pattullo had similar accounts with the Toronto office of Baker, Weeks & Co. and with the Toronto branch of the Bank of Montreal, and the procedures described above were followed with respect to purchases of Canadian stocks made for her.

During the period under review, George Pattullo purchased stocks in Canadian corporations in the total amount of $334,928.12; the initial purchase took place on November 13, 1963, and the final purchase took place

on February 12, 1964. Prior to any of the subject purchases, on July 18, 1963, Mr. Pattullo owned Canadian funds in the amount of $399,503.15, all of which, except for $9,893.28, was on deposit in Canada. After the last of the subject purchases, on March 5, 1964, he owned Canadian funds in the amount of $221,493.12, all of which was on deposit in Canada. Mr. Pattullo's Canadian dollar account in Canada had been replenished, in large part, by proceeds from the conversion, on November 7 and 12, 1963, of $175,000 from his United States dollar account in New York City.

Lucile Pattullo, during the period under review, purchased stocks in Canadian corporations in the total amount of $227,806.24; the initial purchase occurred on November 14, 1963, and the final purchase occurred on February 13, 1964. Mrs. Pattullo owned $560,232.13 in Canadian funds on deposit in Canada on July 18, 1963, and $482,963.57 on March 16, 1964. Mrs. Pattullo's Canadian dollar account in Canada had likewise been replenished, in part, by proceeds from the conversion, on March 2, 1964, of $75,000 from her United States dollar account in New York City.

The Pattullos filed Interest Equalization Tax Returns in December, 1964, reporting the Canadian stock purchases they had made from November, 1963 through February, 1964, and paid the amounts shown to be due on the returns. On June 2, 1965, claims were filed for refund of the taxes so paid, on the asserted ground that the retroactive application of the tax to the subject purchases was unconstitutional.[4] The Commissioner of Internal Revenue did not allow these claims; where-

[4]On March 8, 1965, George Pattullo filed a claim for refund of the $2,563.66 in interest equalization tax he had paid with respect to his purchase of 1,000 shares of Calgary and Edmonton Corp., Ltd., stock in November, 1963. On October 22, 1965, Mr. Pattullo was refunded the $2,563.66 pursuant to his claim for refund on the ground that Calgary and Edmonton Corp., Ltd. satisfied the requirements of section 4920(a)(8) of the 1954 Code, and accordingly was not subject to the interest equalization tax.

upon, after six months, the Pattullos brought these suits.

Plaintiffs contend that the interest equalization tax, as retroactively applied to the transactions here involved, is unconstitutional because, as so applied, the tax (1) violates the due process clause of the Fifth Amendment, (2) represents unauthorized legislation by the Executive, and (3) constitutes an invalid unapportioned direct tax. It is our view that plaintiffs' positions are not well taken; we hold that the Interest Equalization Tax Act, as applied to the subject purchases, is not unconstitutional under any of the theories advanced by plaintiffs.

I

Plaintiffs initially assert the unconstitutionality of the interest equalization tax on the ground that its retroactive application here is arbitrary and capricious, and constitutes a deprivation of property without due process of law in violation of the Fifth Amendment to the United States Constitution.[5] This is so, plaintiffs urge, irrespective of the quantity or quality of nonstatutory notice given prior to enactment regarding the retroactive effect of the tax. We do not agree.[6]

Retroactivity in a tax statute by no means represents a novel occurrence. To the contrary, cases which have dealt with the issue are numerous, and it cannot be gainsaid that such retroactivity is sanctioned in proper circumstances. Thus, the disagreement between the parties here centers largely on whether the circumstances surrounding the instant tax are such that its retroactive application is constitutional.

[5]The Fifth Amendment to the Constitution of the United States provides, in pertinent part:

"No person shall * * * be deprived of life, liberty, or property, without due process of law; * * *."

[6]The factual posture of the suits now before us obviates the need to reach the question whether the restrictive application of a tax statute of the type here involved is constitutional where no pre-enactment notice is given regarding the statute's retractive effect.

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It is well settled that an *income* tax statute may be given retroactive effect without violating the Constitution. *Brushaber v. Union Pacific R.R. Co.*, 240 U.S. 1 (1916); *Cooper v. United States*, 280 U.S. 409 (1930); *Welch v. Henry*, 305 U.S. 134 (1938); *Gilmor v. Quinlivan*, 143 F. Supp. 440 (N.D. Ohio 1956). An examination of this principle reveals certain motivating considerations. Initially, there is the revenue-raising purpose of income tax statutes, which purpose is of paramount importance to the continued functioning of government. An income tax is levied, moreover, upon the proceeds of an "involuntary" act; that is, it is generally assumed that a taxpayer will generate income, rather than refrain from so doing, irrespective of the imposition of a tax upon that income. And, perhaps of greatest importance, because the income tax has become a recognized fact of life, taxpayers are presumed to be on notice.

Quite obviously, the considerations underlying different types of tax statutes are not uniform. Indeed, tax statutes commonly vary with respect to, *inter alia*, their underlying congressional intent, the transactions or interests upon which they are levied, their economic purpose, and perhaps even their social function. Nevertheless, near exclusive reliance upon the above-detailed considerations incident to *income* tax statutes is evident when plaintiffs enunciate the rigid tripartite standard which they consider to be the touchstone of valid retroactivity for *all* tax statutes. This standard, which plaintiffs claim to be the distillate of the decided cases, is that retroactivity in a tax statute is sanctioned *only* if (1) the tax is primarily a revenue measure, or (2) the tax is not imposed on some voluntary act, or (3) the taxpayer is forewarned of such retroactivity *by the statute books or repeated congressional practice.* The limitation inherent in plaintiffs' standard, as we understand it, is that a new type of tax, primarily regulatory in nature and imposed upon a voluntary taxpayer act, may *never* validly be given retroactive effect.

We perceive no such rigid standard of constitutionality in the decided cases, nor do we recognize the limitation inherent in the alleged standard. *See, Milliken v. United States*, 283 U.S. 15 (1931); *United States v. Hudson*, 299 U.S. 498 (1937); *Welch v. Henry, supra.* We are guided, rather, by the more flexible criteria delineated by the Supreme Court in *Welch v. Henry, supra*, at page 147:

> * * * In each case it is necessary to consider the *nature of the tax* and the *circumstances in which it is laid* before it can be said that its retroactive application is *so harsh and oppressive* as to transgress the constitutional limitation. [Emphasis supplied.]

Accordingly, it is our view that where there is reasonable cause to believe or expect that a tax will be imposed upon a presently nontaxable transaction, the retrospective application of such tax does not constitute a denial of due process.[7]

There can be little doubt, on the facts of the instant suits, as to the pervasiveness or the efficacy of the forewarnings given. Indeed, the facts detailed above reveal not only numerous instances of general notice to the public regarding retroactive application of the proposed tax, but also communication of actual notice to plaintiffs to this effect. We do not believe that such widespread and effective notice is the stuff of which denial of due process cases are made. *See, Sidney v. Commissioner*, 273 F. 2d 928 (2d Cir. 1960).

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[7] *See, Welch v. Henry, supra*, wherein the Supreme Court distinguished earlier decisions, in which retroactive tax statutes were held invalid, with these important words at page 147:

"* * * [D]ecision [there] was rested on the ground that the nature or the amount of the tax could not reasonably have been anticipated by the taxpayer at the time of the particular voluntary act which the statute later made the taxable event. [Citations omitted.] * * *."

We are of the view that there was reasonable opportunity for the requisite anticipation in the suits now before us.

Nor do the early tax decisions of the Supreme Court relied upon by plaintiffs impart otherwise. *See, Nichols v. Coolidge*, 274 U. S. 531 (1927); *Blodgett v. Holden*, 275 U.S. 142 (1927); *Untermyer v. Anderson*, 276 U.S. 440 (1928). In none of these cases was there any showing of prior notice that the estate tax or gift tax involved, respectively, would be made effective prior to the date of its enactment. A reading of the opinions in these cited cases, moreover, reveals that there was serious disagreement among the members of the Court as to whether the tax statutes there involved were even *intended* to apply retroactively.[8]

Perhaps of critical importance here, and consonant with the above-quoted "balancing test" excerpt from *Welch v. Henry, supra*, are the circumstances in which the subject tax was laid. Although the interest equalization tax would raise a not insignificant amount of revenue, it is clear that the primary purpose of the tax was regulatory—to limit the outflow of long-term capital from the United States, and thereby alleviate the United States balance of payments problem. The retroactive aspect of the tax, moreover, was no mere embellishment; indeed, that aspect was a necessary prerequisite to the effectuation of the regulatory purpose. For if the interest equalization tax had not been proposed and enacted with retroactive effect, a premium would have been placed upon the consummation of "covered" transactions prior to the tax's enactment date. Far from relieving the balance of payments problem, such a prospect would have intolerably aggravated

[8] We have expressed our view that the above-cited cases holding unconstitutional the retoractive application of certain tax statutes are factually distinguishable in a significant sense from the suits now before us. We note in passing, moreover, that these early Supreme Court tax decisions, in which the Court was closely divided on the retroactivity issue, have since been frequently distinguished and narrowly limited; it is not entirely clear, in light of the above and the ever-increasing role of taxation in every area of activity, that the same result would obtain in these early cases were they before the Court today. *See, Welch v. Henry, supra*, at 147; *Sidney v. Commissioner, supra*, at 932.

the problem. That the public purpose served by the procedures invoked at the time of, and prior to, enactment was of the highest order cannot seriously be questioned.

Nor can it be said, upon an objective view of the facts, that the retroactive application of the tax was "so harsh and oppressive as to transgress the constitutional limitation." Indeed, any limited restriction imposed upon the Pattullos' investment options, which restriction actually stemmed from the issuance of effective notice, can hardly counterbalance the serious national purpose underlying the subject tax. Accordingly, we hold that the interest equalization tax, as retroactively applied to the transactions here involved, does not violate the due process clause of the Fifth Amendment to the Constitution.

II

Plaintiffs alternatively assert the unconstitutionality of the tax on the ground that its retroactive application constitutes the making of law by public announcement, also in violation of the due process clause of the Fifth Amendment, and represents an encroachment by the president, in violation of the separation of powers, upon the legislative power vested in Congress by Article I, Section 1, of the Constitution.[9] This is so, plaintiffs continue, because the desired result (restriction of outflow of long-term capital) was accomplished, at least in part, prior to the enactment of the tax, owing to the fact that many people heeded the warnings and notices given that the proposed tax would be retrospectively applied. Though the operative facts are accurately por-

[9]Article I, Section 1, of the United States Constitution provides as follows:

"All legislative Powers herein granted shall be vested in a Congress of the United States, which shall consist of a Senate and House of Representatives."

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trayed by plaintiffs, the conclusions drawn are without justification.[10]

Clearly, there *was* no interest equalization tax until the enactment date, September 2, 1964. Implicit in plaintiffs' argument is the idea that pre-enactment notice that a proposed tax will be retrospectively applied effectively accelerates the enactment date, and invalidates the tax. In this plaintiffs are mistaken; their argument is contrary to the plain realities of the situation. The very warnings which plaintiffs characterize as unauthorized lawmaking represent, in fact, the elements of fairness, reasonableness, and equity in the suits before us.

The realities in these suits, as we view them, are that the Pattullos, with full knowledge of the pendency of a retroactive tax bill apparently applicable to their proposed transactions, chose to gamble that the bill would not become law, or that an exemption would be added covering their purchases. As subsequent events clearly have shown, the gamble was ill-advised. Now, plaintiffs disaffirm the notice that was given for *their* benefit and, instead, attack such notice as an unconstitutional usurpation of Congress' legislative power. This, plaintiffs cannot do. Accordingly, we hold that preenactment notice of a proposed retroactive tax, followed by the enactment of such tax, does not constitute unauthorized legislation by public announcement.

III

Plaintiffs further assert the unconstitutionality of the interest equalization tax on the ground that, as retroactively applied in the cases now under review, the

[10]The constitutional authority for the statute in question lies in Article I, Section 8, wherein Congress is given the power to lay and collect taxes, to coin money and regulate its value, and to make all laws necessary and proper for carrying out the foregoing. *See also, Perry v. United States*, 294 U.S. 330 (1935); *United States v. Doremus*, 249 U.S. 86 (1919).

tax violates the provisions of Article I, Section 2 and Section 9, of the Constitution that no direct tax shall be levied without apportionment.[11] Plaintiffs' position is necessarily based on the premise that an excise tax, when retroactively applied, is converted to a direct tax requiring apportionment to preserve its constitutionality. This position is not well taken.

It is not entirely clear what characteristics comprise a direct tax, and thus distinguish it from other, or indirect, taxes. At one time classification as a direct tax was synonymous with capitation or poll taxes and taxes on land, while later the issue became one of interpretation with policy considerations a dominant factor. *See, Springer* v. *United States*, 102 U.S. 586 (1880); *Pollock* v. *Farmers' Loan & Trust Co.*, 157 U.S. 429 (1895), *on rehearing*, 158 U.S. 601 (1895); *Nicol* v. *Ames*, 173 U.S. 509 (1899); *Knowlton* v. *Moore*, 178 U.S. 41 (1900). It *is* clear, however, that the burden of persuasion that a particular tax is direct lies upon the claimant of such fact. *See, New York Trust Co.* v. *Eisner*, 256 U.S. 345 (1921); *Anniston Mfg. Co.* v. *Davis*, 301 U.S. 337 (1937). Plaintiffs concede that a tax imposed upon the exercise of a privilege, as here, is an excise tax and not a direct tax. Yet, they urge that such a tax, when retroactively applied, is no longer a tax on the transaction, but rather an unconstitutional direct tax on the underlying property.

We fail to see, and plantiffs provide no assistance in this regard, how the tax in question is distinguishable, in any meaningful sense, as a direct tax from other valid taxes levied upon the receipt or acquisition of property. *See, Scholey* v. *Rew*, 23 *Wall.* 331 (1874);

[11] "Section 2 and Section 9 of Article I of the United States Constitution provide, in pertinent part, as follows:

"§2. Representatives and direct Taxes shall be apportioned among the several States which may be included within this Union, according to their respective Numbers, * * *

"§9. No Capitation, or other direct, Tax shall be laid, unless in Proportion to the Census or Enumeration herein before directed to be taken."

Knowlton v. *Moore, supra.* Nor do we see how the mere retroactive application of a tax, conceded to be an excise imposed upon the exercise of a privilege, can convert such tax to a direct levy on property. Plaintiffs have failed to sustain their burden of persuasion and we hold, accordingly, that the interest equalization tax is not an unconstitutional direct tax.[12]

FINDINGS OF FACT

The court, having considered the stipulation of the parties, the briefs and argument of counsel, makes findings of fact as follows:

1. George Pattulo was born in Canada in 1880, and lived there until he was 26 years old. His cousin was later a long-time Prime Minister of Manitoba, one of the Canadian provinces, and at George Pattullo's death, all his kinsmen were Canadians.

2. George Pattullo moved to the United States in 1906. He remained a British subject, however, until 1917 when he was naturalized a United States citizen. By profession Mr. Pattullo was a writer, especially of Western fiction. He was the author of several books, including *The Untamed* (1911), *All our Yesterdays* (1948), and *Some Men in Their Time* (1959). Also his short stories were published in various magazines, including The Saturday Evening Post and McClure's.

[12]Plaintiffs assert for the first time, in their reply brief, that even if retroactive application of the interest equalization tax is constitutional, the tax is, nevertheless, inapplicable to the transactions here involved. This is so, plaintiffs urge, because the Pattullo purchases entailed no outflow of United States funds; therefore, the purchases had no adverse effect on the United States balance of payments. This argument is untimely as, indeed, plaintiffs' counsel conceded at oral argument.

We note in passing, however, that no discernible implication emerges from the clear wording of the tax provision pertinent here to the effect that the taxability of a "covered" transaction, turns on the nature of the funds used. The free convertibility between United States and Canadian dollars, and the instances of actual conversion of funds, moreover, strongly tend to refute even the factual basis of plaintiffs' position.

3. In 1913, George Pattullo married Lucile Wilson, of Dallas, Texas. Throughout their marriage the Pattullos have lived in Texas or New York except for the period that George Pattullo served as a special correspondent for The Saturday Evening Post with the American Expeditionary Force during World War I. George Pattullo died July 29, 1967, in New York City, where the Pattullos had resided for many years. He was survived by his wife, Lucile W. Pattullo.

4. On July 18, 1963, President John F. Kennedy delivered to both Houses of Congress a message announcing a series of coordinated actions designed to alleviate the United States balance of payments problem, including a proposed "interest equalization tax." This message appears as H. Doc. No. 141, 109 Cong. Record, Part 10, p. 12806 (Senate), and 109 Cong. Record, Part 10, p. 12940 (House of Representatives).

5. On July 18, 1963, the United States Treasury Department issued a 25-page "Detailed Explanation of the Interest Equalization Tax." Also on July 18, 1963, the Treasury Department issued a 6-page "Information on Proposed Interest Equalization Tax," attached to which were samples of Forms 3625 and 3626, "Certificates of American Ownership," the execution of which by American sellers of foreign securities exempted the buyers from liability for the proposed tax. Both the "Detailed Explanation of the Interest Equalization Tax" and the "Information on Proposed Interest Equalization Tax" contained descriptions of the tax as proposed by President Kennedy in his message to Congress. These two documents were made available to the press, and to those of the general public who requested copies. They were also mailed to members and member organizations of the New York Stock Exchange.

6. The press gave extensive publicity to the President's proposed interest equalization tax and to the proposed immediate effectiveness of the tax. For instance, the recommended tax was the subject of lead

articles on the front page of the New York Times for July 19, 1963.

7. On July 18, 1963, after President Kennedy's message was made public, prices of stocks and bonds dropped on foreign exchanges, especially those in which Japanese or Canadian securities were traded. Other markets reflected a strengthening in the position of the dollar (i.e., increases in the prices quoted for dollars in terms of foreign currencies and decreases in the prices quoted for foreign currencies in terms of dollars), and a rise in the prices of United States bonds and Treasury bills. After July 18, 1963, it was general knowledge among dealers and brokers in stocks and bonds, both in the United States and abroad, that the Kennedy administration had recommended a tax, applicable from and after July 19, 1963, upon the purchase by United States persons of foreign stocks and bonds.

8. The Treasury Department published in the Federal Register of August 16, 1963, a "Notice of Proposed Effective Date" of the interest equalization tax bill (H.R. 8000). This notice set out the provisions of the bill concerning the proposed effective date of the tax. It was stated that the tax was proposed to apply (with certain specified exceptions) to acquisitions of stock and debt obligations made after July 18, 1963. This Federal Register notice also set out a general description of the provisions of the proposed tax and of the exemptions from its coverage.

9. The application of the proposed tax to transactions on national securities exchanges in the United States was postponed until August 19, 1963, in order to allow representatives of the Treasury Department and of the exchanges to work out the technical problems for procedures adapted to the proposed tax and its proposed retroactive application. Beginning August 19, 1963, the exchanges instituted procedures whereby a foreign security was subject to normal exchange trading only if the seller was a United States person so that the trans-

action would not make the buyer liable for the proposed tax. The sale of a foreign security by a seller who was not a United States person could be made only by a special contract, pursuant to an offering stating: "buyer subject to Interest Equalization Tax." (On the New York Stock Exchange such a sale was designated on the ticker tape by the symbol "F.")

10. After July 18, 1963 (or after August 19, 1963, in the case of securities traded on a national securities exchange), it was the practice of brokers and dealers in stocks and bonds to advise United States persons who wished to buy foreign stocks and bonds that such purchases (from non-United States persons) would be subject to the interest equalization tax if the pending bill were enacted with the effective date proposed by the President.

11. On August 22, 1963, the Toronto Stock Exchange put into operation a second market, called the "Foreign Market," to handle all transactions between United States sellers and United States buyers of Canadian stocks, such sales being exempt from the proposed interest equalization tax. All 1,100 stocks listed on the Toronto Stock Exchange could be traded on this Foreign Market. Bid and asked quotations on the Foreign Market were recorded at each trading post alongside the quotations for the regular market. Foreign Market purchase orders and sales orders were distinctively colored, and all floor slips for these transactions were stamped with the symbol "z." Also, records of Foreign Market transactions carried the prefix "z" on the Toronto Stock Exchange ticker tape.

12. Baker, Weeks & Co. is a stock brokerage and investment advisory firm with its main office in New York City. The firm has offices in Toronto and in Montreal, Canada, and is a member of the stock exchanges of both those cities, as well as of the New York Stock Exchange and the American Stock Exchange.

13. Both George Pattullo and Lucile W. Pattullo had accounts with Baker, Weeks & Co. for many years, including 1963 and 1964. James A. Edgar, a close personal friend of George Pattullo, and Thomas F. Bohen, both of Baker, Weeks & Co., acted as brokers for George Pattullo, who at all times made his own decisions as to what stocks he wanted to buy or sell. George Pattullo also gave instructions to these brokers as to the stocks to be bought or sold for the account of Lucile W. Pattullo.

14. During the last months of 1963 and the early months of 1964, George Pattullo gave instructions to Mr. Bohen or Mr. Edgar for purchase of stocks in certain Canadian corporations. When George Pattullo said that he wanted to buy these stocks, Mr. Bohen and Mr. Edgar informed George Pattullo that there was pending before the United States Congress a proposed tax called the Interest Equalization Tax, which was proposed to be made retroactive, and if enacted as proposed, would apply to the purchase of foreign securities by United States citizens. Notwithstanding what Mr. Edgar and Mr. Bohen told him, George Pattullo gave them orders to purchase the Canadian stocks on the Toronto Stock Exchange for his account and for his wife's account. Mr. Edgar, or Mr. Bohen, transmitted these orders to the Toronto office of Baker, Weeks & Co., which then executed the orders on the Toronto Stock Exchange. The stocks so purchased are those set out in findings 23 and 24.

15. When the Toronto office of Baker, Weeks & Co. executed the purchase orders for Canadian stock for George Pattullo, it charged his account styled "Canadian Funds Account" in Canadian dollars. (George Pattullo also had an account with Baker, Weeks & Co. in New York styled "United States Funds" account, to which were charged his purchases of United States securities.) Upon receipt of the stock certificates pursuant to the purchase orders, the Toronto office of Baker, Weeks & Co. would deliver the certificates to the Bank

of Montreal, Tononto Branch, against payment by the Bank of Montreal, which would charge the payment to George Pattullo's Canadian dollars checking account in the Toronto branch of the Bank of Montreal. Upon such delivery and payment, the "Canadian Funds Account" with the Toronto office of Baker, Weeks & Co. would be credited with the payment received from the Bank of Montreal. The certificates were held by the Bank of Montreal in a "Safekeeping" account for George Pattullo. Lucile W. Pattullo has similar accounts with the Toronto offce of Baker, Weeks & Co. and with the Toronto branch of the Bank of Montreal, and the procedures described above were followed in respect to purchases of Canadian stocks made for her.

16. During 1963 and 1964, George Pattullo maintained a United States dollar account and a Canadian dollar account in the Agency Bank of Montreal in New York City, and also a Canadian dollar account in the Toronto branch of the Bank of Montreal. The following is a statement of George Pattullo's Canadian dollar account in the Toronto branch of the Bank of Montreal from July 18, 1963, through March 5, 1964.

GEORGE PATTULLO
Canadian Dollar Account in Toronto Branch, Bank of Montreal

Date	*Description of Item*	*Deposits*	*Withdrawals*	*Balance*
7/18/63	Balance			$ 57,837.43
	Dividends from Canadian securities	$ 111.24		57,948.67
	Personal disbursement		$ 100.00	57,848.67
11/ 7/63	Transfer from U.S. $ account in Agency Bank of Montreal, New York City	100,000.00		157,848.67
11/12/63	Transfer from U.S. $ account in Agency Bank of Montreal, New York City	75,000.00		232,848.67
11/21/63	Payment for 1,000 shares Calgary & Edmonton Corp.		18,418.25	214,430.42
	Payment for 1,000 shares Hollinger Consolidated Gold Mines		27,320.35	187,110.07

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Date	Description of Item	Deposits	Withdrawals	Balance
	Payment for 1,000 shares Bell Telephone of Canada		54,567.22	132,542.85
11/25/63	Proceeds from Certificate of Time Deposit No. 12639	$336,950.63		$469,493.48
11/27/63	Payment for 1,000 shares Cassiar Asbestos Corp.		$11,503.59	457,989.89
11/28/63	Payment for 1,000 shares British Columbia Forest Products		23,244.76	434,745.13
	Personal disbursements and bank charges		868.35	433,876.78
12/13/63	Payment for 1,000 shares Hollinger Consolidated Gold Mines		27,357.85	406,518.93
	Dividends	336.04		406,854.97
	Personal disbursements		100.00	406,754.97
1/14/64	Payment for 675 shares Bell Telephone of Canada		36,221.60	370,533.37
	Dividends	630.00		371,163.37
2/11/64	Payment for 325 shares Bell Telephone of Canada		17,766.80	353,396.57
2/14/64	Payment for 1,000 shares Bell Telephone of Canada		54,157.85	299,238.72
2/21/64	Loan to Lucile W. Pattullo		23,145.52	276,093.20
2/25/64	Payment for 500 shares Bank of Montreal		32,007.85	244,085.35
2/28/64	Payment for 500 shares Bank of Montreal		32,439.10	211,646.25
3/ 4/64	Transfer from Canadian $ account in Agency Bank of Montreal, New York City	9,893.28		221,539.53
	Dividends	178.59		221,718.12
	Personal disbursements		225.00	221,493.12
3/ 5/64	Balance			221,493.12

17. During 1963 and 1964, Lucile W. Pattullo maintained a United States dollar account and a Canadian dollar account in the Agency Bank of Montreal in New York City, and also a Canadian dollar account in the Toronto branch of the Bank of Montreal. The following is a statement of Lucile W. Pattullo's Canadian dollar account in the Toronto branch of the Bank of Montreal from July 18, 1963, through March 5, 1964.

LUCILE W. PATTULLO
Canadian Dollar Account in Toronto Branch, Bank of Montreal

Date	Description of Item	Deposits	Withdrawals	Balance
7/18/63	Balance			$ 64,371.67
	Dividends and interest on Canadian securities	$ 1,994.82		66,366.49
10/ 1/63	Proceeds from matured Dominion of Canada bonds	20,000.00		86,366.49
	Purchase of Certificate of Time Deposit		$25,000.00	61,366.49
11/27/63	Payment for 1,000 shares Bell Telephone of Canada		54,564.09	6,802.40
	Dividends and interest	1,203.38		8,005.78
1/27/64	Proceeds from Certificate of Time Deposit No. 12672	260,747.93		268,753.71
	Dividends	364.50		269,118.21
2/ 3/64	Proceeds from sale of 500 shares of Geco Mines	16,559.82		285,678.03
	Purchase of Certificate of Time Deposit		200,000.00	85,678.03
2/11/64	Payment for 500 shares Bell Telephone of Canada		27,332.85	58,345.18
2/14/64	Payment for 1,500 shares Bell Telephone of Canada		81,490.70	(23,145.52)
2/21/64	Loan from George Pattullo	23,145.52		—0—
3/ 2/64	Transfer from U.S. $ account in Agency Bank of Montreal, New York City	75,000.00		75,000.00
	Payment for 175 shares Bank of Montreal		11,282.27	63,717.73
3/ 4/64	Transfer from Canadian $ account in Agency Bank of Montreal, New York City	20,410.93		84,128.66
	Payment for 725 shares Bank of Montreal		47,179.10	36,949.56
3/ 9/64	Payment for 100 shares Bank of Montreal		6,002.50	30,947.06
	Dividends	538.12		31,485.18
	Balance			31,485.18

18. The following table lists certain certificates of time deposits that George Pattullo held with the Bank of Montreal. The table shows the number of each certificate, its term and its maturity date, the date George Pattullo purchased it and its total cost to him (in Canadian dollars), and the date George Pattullo cashed it

and its total proceeds to him, including interest (in Canadian dollars).

GEORGE PATTULLO
Certificates of Time Deposits
with Bank of Montreal

Certificate Number	Term	Maturity Date	Date Purchased	Cost in Canadian Dollars	Date Cashed	Proceeds in Canadian Dollars
4805	90 days	11/29/62	9/ 4/62	323,062.50	11/29/62	326,278 74
6950	90 days	2/27/63	11/29/62	326,278.74	2/27/63	329,014.12
7016	90 days	5/28/63	2/27/63	329,014.12	5/28/63	331,772.44
7077	90 days	8/26/63	5/28/63	331,772.44	8/26/63	334,206.19
12639	91 days	11/25/63	8/26/63	334,206.19	11/25/63	336,950.63

19. The following table lists certain certificates of time deposits that Lucile W. Pattullo held with the Bank of Montreal. The table shows the number of each certificate, its term and its maturity date, the date Lucile W. Pattullo purchased it and its total cost to her (in Canadian dollars), and the date Lucile W. Pattullo cashed it and its total proceeds to her, including interest (in Canadian dollars).

LUCILE W. PATTULO
Certificates of Time Deposits
with Bank of Montreal

Certificate Number	Term	Maturity Date	Date Purchased	Cost in Canadian Dollars	Date Cashed	Proceeds in Canadian Dollars
First Set:						
4717	90 days	8/ 1/62	5/ 3/62	250,000.00	8/ 1/62	250,000.00 (2003.42 int. to checking acct.)
4796	90 days	10/30/62	8/ 1/62	250,000.00	10/30/62	250,000.00 (2188.36 int. to checking acct.)
6907	90 days	1/28/63	10/30/62	250,000.00	1/28/63	252,488.87
6990	91 days	4/29/63	1/28/63	252,488.87	4/29/63	254,762.92
6990	91 days	7/30/63	4/29/63	254,762.92	7/30/63	256,720.01
10949	91 days	10/28/63	7/30/63	256,720.01	10/28/63	258,624.15
12672	90 days	1/27/64	10/28/63	258,624.15	1/27/64	260,747.93
Second Set:						
4806	90 days	11/29/62	9/ 4/62	215,375.00	11/29/62	217,519.16
6949	90 days	2/27/63	11/29/62	217,519.16	2/27/63	219,342.74
7015	90 days	5/28/63	2/27/63	219,342.74	5/28/63	221,181.61
7076	90 days	8/26/63	5/28/63	221,181.61	8/26/63	222,804.12

Certificate Number	Term	Maturity Date	Date Purchased	Cost in Canadian Dollars	Date Cashed	Proceeds in Canadian Dollars
Second Set—Con						
12641	91 days	11/25/63	8/26/63	222,804.12	11/25/63	224,633.74
12693	91 days	2/24/64	11/25/63	224,633.74	2/24/64	226,478.39
12769	91 days	5/25/64	2/24/64	226,478.39	5/25/64	226,478.39
12850	91 days	8/24/64	5/25/64	226,478.39	8/24/64	226,478.39
11028	91 days	11/23/64	8/24/64	226,478.39	11/23/64	226,478.39
11110	91 days	2/22/65	11/23/64	226,478.39	2/22/65	228,398.18
Third Set:						
12661	90 days	12/30/63	10/ 1/63	25,000.00	12/30/63	25,000.00
12721	92 days	3/31/64	12/30/63	25,000.00	3/31/64	25,000.00
Fourth Set:						
12749	90 days	5/ 1/64	1/31/64	200,000.00	5/ 1/64	200,000.00
12823	90 days	7/30/64	5/ 1/64	200,000.00	7/30/64	200,000.00

20. At July 18, 1963, Canadian funds were owned by George Pattullo and Lucile W. Pattullo as follows:

Mr. Pattullo

Bank account—Toronto Branch, Bank of Montreal	$ 57,837.43
Time Deposit (Canadian funds) with Toronto Branch, Bank of Montreal, dated May 28, 1963, and due August 26, 1963	331,772.44
Bank account (Canadian funds)—Agency Bank of Montreal, New York, N.Y.	9,893.28
Total Canadian funds	$399,503.15

The Time Deposit was renewed on August 26 for an additional 90 days and on November 25, 1963, the proceeds therefrom, $336,950.63, were deposited in the account at Toronto.

Mrs. Pattullo

Bank account—Toronto Branch, Bank of Montreal		$ 64,371.67
Time Deposits (Canadian funds) with Toronto Branch, Bank of Montreal:		
Dated April 29, 1963, due July 29, 1963	$254,762.92	
Dated May 28, 1963, due Aug. 26, 1963	221,181.61	475,944.53
Bank accounts (Canadian funds—Agency Bank of Montreal, New York		
Individual account	18,598.41	
Joint account	1,317.52	19,915.93
Total Canadian funds		$560,232.13

The Canadian funds Time Deposit due July 29, 1963, was renewed at that time and again on October 28, 1963. On January 27, 1964, it matured and the proceeds, $260,747.93, were deposited to her account at the Toronto branch.

The other Time Deposits were renewed at 90-day intervals and were still on hand at June 28, 1966.

21. At March 5, 1964, Canadian funds were owned by George Pattullo as follows:

Bank account—Toronto Branch, Bank of Montreal	$221,493.12
Time Deposit (Canadian funds) with Toronto Branch, Bank of Montreal	—0—
Bank account (Canadian funds)—Agency Bank of Montreal, New York, N.Y.	—0—
Total Canadian funds	$221,493.12

At March 16, 1964, Canadian funds were owned by Lucile W. Pattullo as follows:

Bank account—Toronto Branch, Bank of Montreal		$ 31,485.18
Time Deposits (Canadian funds) with Toronto Branch, Bank of Montreal:		
Dated Jan. 31, 1964, due May 1, 1964	$200,000.00	
Dated Feb. 24, 1964, due May 25, 1964	226,478.39	
Dated Dec. 30, 1963, due March 31, 1964	25,000.00	451,478.39
Bank accounts (Canadian funds)—Agency Bank of Montreal, New York, N.Y.		—0—
Total Canadian funds		$482,963.57

22. Between October 1, 1963, and March 9, 1964, the rate of exchange to convert Canadian dollars into U.S. dollars was between 0.92 and 0.93. The rate was subject to daily fluctuations, but for the pertinent dates, never varied by as much as 0.01.

23. The following table lists the stocks issued by Canadian corporations that George Pattullo purchased between July 18, 1963, and September 2, 1964. The table shows (1) the date of the trade on the Toronto Stock Exchange, (2) the number of shares purchased, (3) the name of the issuer of the stock purchased and (4) the total cost of the stock in Canadian dollars.

GEORGE PATTULLO

Date of Purchase	Number of Shares	Name of Issuer	Total Cost, in Canadian Dollars
11/13/63	700	Calgary & Edmonton Corp.	12,847.50
11/13/63	200	Cassiar Asbestos	2,300.00
11/13/63	1000	Hollinger Consolidated Gold Mines[1]	27,350.00
11/14/63	1000	Bell Telephone of Canada	54,559.37
11/14/63	1000	British Columbia Forest Products	23,237.50
11/14/63	300	Calgary & Edmonton Corp.	5,565.00
11/14/63	800	Cassiar Asbestos	9,200.00
11/14/63	1000	Hollinger Consolidated Gold Mines	27,312.50
1/ 3/64	475	Bell Telephone of Canada	25,483.75
1/ 6/64	125	Bell Telephone of Canada	6,706.25
1/ 8/64	75	Bell Telephone of Canada	4,023.75
2/ 4/64	325	Bell Telephone of Canada	17,761.25
2/12/64	1000	Bank of Montreal	64,431.25
2/12/64	1000	Bell Telephone of Canada	54,150.00

[1] These 1000 shares of Hollinger Consolidated Gold Mines stock were purchased by George Pattullo as a gift for his wife, and the transaction was entered in her account with Baker, Weeks & Co.

24. The following table lists the stocks issued by Canadian corporations that Lucile W. Pattullo purchased between July 18, 1963, and September 2, 1964. The table shows (1) the date of the trade on the Toronto Stock Exchange, (2) the number of shares purchased, (3) the name of the issuer of the stock purchased and (4) the total cost of the stock in Canadian dollars.

LUCILE W. PATTULLO

Date of Purchase	Number of Shares	Name of Issuer	Total Cost, in Canadian Dollars
11/14/63	1000	Bell Telephone of Canada	54,556.24
2 /4/64	1000	Bell Telephone of Canada	54,650.00
2/12/64	1000	Bell Telephone of Canada	54,150.00
2/12/64	825	Bank of Montreal	53,171.25
2/13/64	175	Bank of Montreal	11,278.75

25. On December 14, 1964, George Pattullo filed a Quarterly Interest Equalization Tax Return (Form 3780) upon which he reported the following "Taxable Acquisitions of Stock of a Foreign Issuer by a United States Person."

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Issuer	Date Acquired	Number of Shares	Total Actual[1] Value	Amount of Tax
Bank of Montreal	Feb. 1964	1000	59,637.57	8,945.64
Bell Telephone of Canada	Nov. 1963	1000	50,647.46	7,597.12
Bell Telephone of Canada	Jan. and Feb. 1964	2000	100,094.62	15,014.19
British Columbia Forest Products, Ltd.	Nov. 1963	1000	21,571.37	3,235.71
Calgary & Edmonton Corp., Ltd.	Nov. 1963	1000	17,091.04	2,563.66
Cassiar Asbestos Corp., Ltd.	Nov. 1963	1000	10,675.23	1,601.28
Hollinger Consolidated Gold Mines, Ltd.	Nov. 1963	2000	50,740.46	7,611.07
Total				46,568.67

[1] Stated in terms of United States dollars rather than Canadian dollars at cost paid at time of purchase.

On December 14, 1964, George Pattullo paid the $46,568.67 in tax reported to be due on the return, plus $286.43 in interest.

26. On December 11, 1964, Lucile W. Pattullo filed a Quarterly Interest Equalization Tax Return (Form 3780) upon which she reported the following "Taxable Acquisitions of Stock of a Foreign Issuer by a United States Person."

Issuer	Date Acquired	Number of Shares	Total Actual[1] Value	Amount of Tax
Bank of Montreal	Feb. 1964	1000	59,654.92	8,948.24
Bell Telephone of Canada	Nov. 1963	1000	50,644.56	7,596.68
Bell Telephone of Canada	Feb. 1964	2000	100,705.28	15,105.79
Total				31,650.71

[1] Stated in terms of United States dollars rather than Canadian dollars at cost paid at time of purchase.

On December 14, 1964, Lucile W. Pattullo paid the $31,650.71 in tax reported to be due on the return, plus $194.67 in interest.

27. On March 8, 1965, George Pattullo filed a claim for refund of the $2,563.66 in interest equalization tax he had paid on account of his purchase of 1,000 shares of Calgary and Edmonton Corp., Ltd., stock in November, 1963. On October 22, 1965, George Pattullo was refunded

the $2,563.66 pursuant to his claim for refund on the ground that Calgary and Edmonton Corp., Ltd., satisfied the requirements of section 4920(a)(8) of the Internal Revenue Code of 1954, and accordingly was not subject to the interest equalization tax.

28. On June 2, 1965, George Pattullo filed an amended claim seeking refund of the entire $46,568.67 interest equalization tax, and $286.43 interest thereon, that he had paid in December, 1964. The ground stated for the claim was the assertion that the retroactive application of the interest equalization tax to transactions fully consummated before the passage of the Act was unconstitutional in that it was arbitrary and capricious and amounted to a deprivation of property without due process of law prohibited by the Fifth Amendment to the Constitution of the United States. The Commissioner of Internal Revenue has not allowed or given notice of disallowance of this amended claim for refund.

29. On June 2, 1965, Lucile W. Pattullo filed a claim for refund of the entire $31,650.71 interest equalization tax, and $194.67 interest thereon, that she had paid in December, 1964. The ground stated for the claim was the assertion that the retroactive application of the interest equalization tax to transactions fully consummated before the passage of the Act was unconstitutional in that it was arbitrary and capricious and amounted to a deprivation of property without due process of law prohibited by the Fifth Amendment of the Constitution of the United States. The Commissioner of Internal Revenue has not allowed or given notice of disallowance of this claim for refund.

CONCLUSION OF LAW

Upon the foregoing findings of fact and opinion, which are adopted by the court and made a part of the judgment herein, the court concludes as a matter of law that plaintiffs are not entitled to recover and the petition is dismissed.